

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

| | | |
|------------------------------------|---|---------------------------|
| Duncan Frank, on behalf of himself |) | |
| and all others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. CIV-14-01193-PRW |
| |) | |
| Crawley Petroleum Corp., |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFF’S MOTION FOR VOLUNTARY DISMISSAL
WITH PREJUDICE**

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Plaintiff Duncan Frank moves for voluntary dismissal of the above-captioned action with prejudice. Rule 41(a)(2) permits dismissal of any action unless dismissal “unfairly affects the other side.” *Phillips USA, Inc. v. Allflex USA, Inc.* 77 F.3d 354, 357 (10th Cir. 1996). Absent this showing of prejudice to the defendant, the district court should grant dismissal. *Brown v. Baeke*, 413 F.3d 1121, 1123 (10th Cir. 2005). In this case, the factors weigh in favor of granting dismissal with prejudice.

I. Background and Status of Litigation

Plaintiff’s Motion for Class Certification is currently pending. Because the class has not been certified, notice of Plaintiff’s instant motion is not required to be sent to the broad putative class. *See Lucero v. Bureau of Collection Recovery, Inc.*, 639 F.3d 1239, 1244 (10th Cir. 2011); *see also*, §1797 Settlement, Voluntary Dismissal, or Compromise of Class Actions – Purpose and Scope of Rule 23(e), 7B Fed. Prac. & Proc. Civ. §1797 (3d ed.).

The parties are not prepared for trial, nor has discovery on the merits been completed at this stage of the litigation. Other than briefing on the issue of class certification, no motions are pending. Particularly, no dispositive motions are pending.

There is no agreement involving the Plaintiff for settlement or otherwise regarding any other matter in connection with this Motion for Voluntary Dismissal With Prejudice. Plaintiff does not wish to proceed with this litigation.

II. Conclusion

In light of the foregoing authority and due to the status of this litigation, there is no prejudice to the defendant in dismissal of this case. Accordingly, Plaintiff respectfully requests that the Court dismiss this case with prejudice, with each side to bear its own costs.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that, on June 24, 2019, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Rex A. Sharp